

1 LEGISLATIVE COUNSEL  
2 *I MINA' BENTE SIETE NA LIHESLATURAN GUĀHAN*  
3 Therese M. Terlaje  
4 155 Hesler Place  
5 Hagåtña, Guam 96910  
Telephone: 472-3253 Facsimile: 472-3525

FILED  
DISTRICT COURT OF GUAM  
NOV 22 2004  
MARY L. M. MORAN  
CLERK OF COURT

(31)

On behalf of

*I MINA' BENTE SIETE NA LIHESLATURAN GUĀHAN*

IN THE DISTRICT COURT OF GUAM

9 JAY MERRILL, etc., et al., ) Civil Case No. CIV04-00046  
10 )  
11 Plaintiffs, ) **MEMORANDUM OF POINTS AND**  
12 vs. ) **AUTHORITIES**  
13 ) **IN SUPPORT OF DEFENDANT I MINA'**  
14 Defendants. ) **BENTE SIETE NA LIHESLATURAN'S**  
 ) **MOTION TO REMAND**  
----- )  
 )

**MEMORANDUM OF POINTS AND AUTHORITIES**

**BACKGROUND**

The Plaintiff, JAY MERRILL, filed this case in the Superior Court of Guam as CV1111-04 on October 25, 2004. In his complaint, the Plaintiff requested:

1. An immediate pre-election judicial declaration on (a) the legal efficiency of the Proposal A ballot pamphlets mailed to the voters by the Directors and the Guam Election Commission, (b) an immediate, pre-election judicial declaration on whether the results of any vote on Proposal A on November 2, 2004 will be invalid as a result of (i) the ballot pamphlets mailed to the voters, and/or (ii) as a result of the mass public uncertainty caused by the Attorney General's opinion.
2. For a preliminary and permanent injunction (a) enjoining the scheduled November 2, 2004 vote on Proposal A, (b) compelling the Director and the Election Commission to remove the Proposal A ballots from the polling places on November 2, 2004, and (c) enjoining the Director and the Election Commission from tabulating any absentee votes cast on Proposal A.

ORIGINAL

3. For an order compelling the Governor to call for a special election on Proposal A pursuant to 3 G.C.A. § 17203, or an order compelling the Election Commission to schedule and hold a special election on Proposal A, to be held not later than sixty (60) days after the date of the court's order.

Defendant *I Mina' Bente Siete Na Liheslaturan Guåhan* was served the complaint on October 26, 2004. The period for Defendant *I Mina' Bente Siete Na Liheslaturan Guåhan* to file an Answer in Superior Court in the case would have expired on December 10, 2004. GUAM R. CIV. P. 12. The filing of this case followed the almost identical filing of a complaint on behalf of Lou Aguon-Schulte as Plaintiff. Aguon-Schulte v. GEC, et.al, CV1103-04. Pursuant to service on the Legislature and Legislative Counsel of Aguon-Schulte's *Ex Parte* Notice of Motion and Motion for order shortening time for hearing on pre-election (1) injunctive relief; (2) declaratory relief, and (3) order compelling a special election on Proposal A, Legislative Counsel appeared on behalf of *I Mina' Bente Siete Na Liheslaturan Guåhan* at the *ex parte* hearing on October 22, 2004, in Aguon-Schulte v. GEC, et al., CV 11103-04. No hearing was held in Superior Court in the Merrill case.

Both the Aguon-Schulte and the Merrill case were removed to District Court pursuant to a Notice of Removal filed by the Attorney General of Guam on October 26, 2004, citing federal jurisdiction of 42 U.S.C. §1983 and §1988, First and Fourteenth Amendment, and Organic Act of Guam claims asserted by Plaintiff. Notice of Removal, p.2, ¶3. The Attorney General also cited federal jurisdiction pursuant to 28 U.S.C. §1367. Notice of Removal, p.2, ¶4. Attorneys for the Governor and Legislature entered separate appearances in District Court, as did the attorney for remaining defendants Guam Election Commission and Gerald Taitano.

## ARGUMENT

The Court should evaluate Plaintiff's grounds for removal in the same manner used to rule upon petitions for removal from state courts to federal courts. 48 U.S.C. §1424-2.

1       The Defendant is entitled to bring this motion for remand within thirty (30) days of the filing  
2 of the Notice of Removal. 28 U.S.C. §1447 (c). The Attorney General filed the Notice of Removal  
3 on October 26, 2004, and therefore the Defendant's Motion to Remand is timely filed.

4       All defendants must join a notice of removal. Parrino v. FHP, Inc., 146 F.3d 699 (9<sup>th</sup> Cir.  
5 1998); 28 USCS 1447(c). *I Mina' Bente Siete Na Liheslaturan Guåhan*, the Guam Legislature, is a  
6 named defendant in this case and did not concur in the removal. See Affidavit of Legislative  
7 Counsel attached hereto.

8       In his Notice of Removal, the Attorney General claims: "As of the filing of this notice of  
9 removal, no defendant has filed any responsive pleading in this matter. And, as a matter of federal  
10 and local law, because the Attorney General for the Government of Guam conducts and controls all  
11 litigation on behalf of the entire Government of Guam, all defendants concur in this removal." See  
12 Notice of Removal, p. 2, ¶5. A removing defendant must do more than simply state in removal  
13 notice that all defendants consent to removal. Smith v. Health Center of Lake City, Inc., M.D. Fla.  
14 2003, 252 F. Supp 2d 1336.

15       There is no record to support any concurrence by the Guam Legislature in the removal. As  
16 indicated in the Affidavit attached hereto, neither Legislature nor the Legislative Counsel's consent  
17 was requested prior to removal. Removal was not directed by any legislative action, including Bill  
18 374, passed into law on October 27, 2004, to remedy any defects surrounding Proposal A.

19       Despite Legislative Counsel's appearance prior to the removal on behalf of the Legislature  
20 at the Superior Court *ex parte* hearing in the Aguon-Schulte case on October 22, 2004, removal was  
21 not discussed. The AG was also present at the *ex parte* hearing but did not enter an appearance on  
22 behalf of the Legislature.

23       A Defendant's unsupported assertion that codefendant did not object to removal does not  
24 satisfy the requirement of official joinder or consent to removal; although removal notice did not  
25 have to be signed by codefendant, codefendant had to join in or consent to removal by way of some

official filing or voicing of consent. Knickerbocker v. Chrysler Corp., E.D. Mich. 1990, 728 F. Supp. 460.

The Attorney General in his Notice of Removal claims that the consent of the legislature was given by him as a matter of law. Notice of Removal, p.2, ¶5. His Motion to Strike the Entrance of Legislative Counsel, filed on October 29, 2004, further expands on his argument that he is by law the sole representative of the Legislature in this matter. We hereby incorporate and respectfully request the Court consider the Legislature's Opposition to the Motion to Strike as well as the Governor's Opposition and the authority cited therein as it is relevant to this issue.

The cognizance of the Attorney General is set out in 5 G.C.A. §30102. On March 25, 1999, subsequent to the passage of the Guam Organic Act amendments of 1998 allowing for an elected Attorney General, §30102 was repealed and reenacted by the Guam Legislature in P.L. 25-03:IV:19 to unequivocally exclude the AG's cognizance over the Legislative Branch, with the changes underscored below:

§ 30102. Department of Law, Cognizance.

(a) Notwithstanding any other provision of law, the Attorney General shall have cognizance of all legal matters, excluding the Legislative and Judicial Branches of the government of Guam, involving the Executive Branch of the government of Guam, its agencies, instrumentalities, public corporations, and autonomous agencies and the Mayors Council, all hereinafter referred to as 'agency'. Where statute any other law permits any agency or autonomous public corporation to hire or retain counsel other than the Attorney General, this shall not preclude said agency or public corporation from requesting the services of the offices of the Attorney General, The Attorney General from providing services to the agency on request by the agency at its sole discretion; provided that said the agency or autonomous public corporation shall reimburse the Office of the Attorney General for such services from funds of said agency or autonomous public corporation the agency's budget. Reimbursement from any agency's budget shall be subject to the appropriation of funds for that purpose. Reimbursement rates or fees authorized hereunder shall be established within 180 days pursuant to the administrative adjudication act. Said reimbursement shall be deposited in the General Fund and credited to the Office of the

1                   Attorney General. In addition, and notwithstanding any other  
2                   law to the contrary, any agency or autonomous public  
3                   corporation of the government of Guam may advance funds to  
4                   the office of the Attorney General for services and incidental  
5                   travel to be rendered by said office on behalf of said agency or  
6                   autonomous public corporation.

7  
8  
9  
10  
11  
12  
13  
14         The Guam Organic Act Amendments of 1998 allowed for an alternative AG selection  
process to the one then mandated by the Organic Act for all heads of agencies (Governor  
appointment and Legislature consent). P.L. 105-291, codified as 48 U.S.C. 1421g (d). Nothing in  
the 1998 Amendments or its history indicate an intention by Congress to bestow on the AG any  
additional powers beyond those as dictated by the laws of Guam. 48 U.S.C. § 1423a ("The  
legislative power of Guam shall extend to all rightful subjects of legislation not inconsistent with the  
provisions of this chapter and the laws of the United States applicable to Guam.") Although  
designated the "Chief Legal Officer" the AG was also deemed to, if appointed, "serve at the  
pleasure of the Governor of Guam". 48 U.S.C. §1421g(d).

15  
16         The relevant portion of the House Committee Report on H.R. 2370, enacted by P.L. 105-291  
as the "Guam Organic Act Amendments of 1998", provides:

17  
18  
19  
20  
21         Guam's Attorney General is currently appointed by the  
Governor of Guam with the advice and consent of the Guam  
Legislature. The appointment of the Attorney General is to a  
four year term or until the end of the term of the appointing  
Governor, whichever is sooner. The Governor may remove the  
Attorney General for cause.

22  
23  
24  
25         Controversies have arisen in the past because of the  
appointment nature of the position of Attorney General. Public  
concerns revolve around political interference with  
investigations, inefficiency of case work and dismissal of the  
Attorney General without cause.

26  
27  
28  
29         In response to the growing number of complaints, a  
survey was conducted to determine an acceptable resolution. It  
was clear that respondents (69%) favored an elected position.  
The survey also asked whether the position should be

1                   mandated by Congress, or left to the Guam Legislature to  
2                   create. A slight majority of citizens favored local legislation.  
3                   An amendment to Guam's Organic Act is needed to allow for  
4                   an elected Attorney General. This legislation provides a  
5                   mechanism for elected legislators to act on this issue.

6                   H.R. Rep. 105-742 (1998).

7                   When the Guam Legislature opted to allow the election of the attorney general by passing  
8                   P.L. 25-44, there was no stated intention to alter nor were any changes made to the authority of the  
9                   AG's office except for the deletion of "or assigned to him by the Governor" from the end of 5  
10                  G.C.A. 30109(h), which now spells out the AG's duty to be: " Perform such other duties as are  
11                  required by law." P.L. 25-44: 4. Instead, P.L. 25-44 described election and removal procedures  
12                  and qualifications.

13                  In addition, the Attorney General's common law powers are governed by 5 G.C.A. §30103,  
14                  which has not been amended since the 13<sup>th</sup> Guam Legislature. The legislative branch of government  
15                  is without question the policy-making agency of the government, and when it elects to legislate in  
16                  respect to the subject matter of any common law rule, the statute supplants the common law rule and  
17                  becomes the public policy of the State in respect to that particular matter. Rhyne v. K-Mart Corp.,  
18                  594 S.E. 2d 1 (N.C. 2004).

19                  In representing the executive branch in the execution of laws, it is clear that the Attorney  
20                  General may represent the government of Guam in the institution of a suit by and on behalf of the  
21                  territory. Such an act is the prerogative of the executive branch, as an act "executing the laws"  
22                  applicable to Guam. Government of Guam v. United States, D.C.Guam 1982, Civ. No. 82-0001.  
23                  The Complaint in the present case regarding Prop A specifically names the Legislature and the  
24                  Governor separately and sets forth their very contrasting roles in the election process and in the  
25                  event the court must fashion a remedy. See Complaint p. 3, ¶¶ 8, 9, 10; p. 11, ¶¶ 42, 43; and p. 13,  
¶ 3.

The Guam Legislature is represented by Legislative Counsel pursuant to 2 G.C.A. §1112.

## § 1112. Organization of Legislature.

Upon the election of the Speaker, the Legislature shall proceed to organize, adopting rules governing its procedure and with the election of a Vice-Speaker, Legislative Secretary and Secretary General of the Guam delegation to the Asian Pacific Parliamentarians Union, who shall be members of the Legislature, and the following attaches: Sergeant-at-Arms, Chaplain, Recording Secretary, and Legislative Counsel, none of whom shall be a member of the Legislature. All such officers shall be elected for the entire term of the Legislature and shall serve during all regular and special sessions thereof, unless otherwise ordered by a majority vote of the Legislature.

The 27<sup>th</sup> Guam Legislature adopted its Standing Rules on January 2, 2002, and those rules expressly provide for representation of the Legislature in Rule 16.08, which provides in pertinent part:

**Section 16.08.** The legal services of the Legislative Counsel shall be available to all Members. Assistant Legislative Counsels may be designated by the Speaker and the Chairperson of the Committee on Rules in order to assist the Legislative Counsel when a conflict arises, or when otherwise deemed necessary. The Legislative Counsel shall act under the general supervision of the Chairperson of the Committee on Rules pursuant to a written contract, and shall:

(i) act as legal counsel for *I Liheslaturan Guåhan*; . . .

(ix) represent *I Liheslaturan Guåhan* in any legal matters before any courts

Rule 17.01.01 of the Standing Rules governs court action on behalf of I Liheslaturan Guahan, and provides in pertinent part:

**Section 17.10.01. Jurisdiction.** Subject and matters which are to be referred to the Committee on Rules shall include, but are not limited to, the following:

- (i) proposed amendments to the Rules and resolutions and bills relating to the business, budget, design and activities of *I Liheslaturan Guåhan*; . . .
- (vii) matters relating to the defense or initiation of court action on behalf of *I Liheslaturan Guåhan*, which shall be authorized by Rules Resolution

In addition, the AG was aware on the date that the notice of removal was filed, that a similar issue of his ability to represent an autonomous entity of the government was then under

1 consideration by the Supreme Court of Guam and that no decision had yet been made. See A.B.  
2 Won Pat Guam International Airport Authority v. Moylan, Guam Supreme Court Case No.  
3 CVA2004-008.

4 In the AG's Motion to Strike the Entry of Appearance by the Legislative Counsel on behalf  
5 of the 27<sup>th</sup> Guam Legislature, the AG cites Moylan v. Camacho, Superior Court of Guam, SP230-  
6 03, "Decision and Order" dated Nov. 10, 2003, as authority for his contention that he alone  
7 represents the Legislature. The Superior Court of Guam in Moylan v. Camacho held that the AG  
8 had standing and authority to bring an action against the Governor of Guam, when brought in the  
9 interest of the people. Id at p. 38. That holding does not apply to this case, where the government  
10 of Guam is neither plaintiff nor defendant and there is no suit being brought by the AG on behalf of  
11 the people. The Legislature is being named specifically as a Defendant, along with different  
12 government entities of the executive branch and the Governor of Guam, and this case potentially  
13 will involve issues of the separation of powers between the branches.

14 All of the above, taken together, confirm that the AG does not exclusively represent the  
15 Legislature in this case "as a matter of federal and local law".

16 In Salvenson v. Western States Bankcard Ass'n, the ninth Circuit addressed the standard of  
17 review to be used by the District Court while ruling upon a petition for removal:

18 The burden of establishing federal jurisdiction is placed on the  
19 party seeking removal and the removal statute is strictly construed  
20 against removal jurisdiction. Normally, the existence of federal  
jurisdiction on removal must be determined from the face of the  
plaintiff's complaint.

21 Underlying these principles is the rationale that a plaintiff should  
22 be free to frame and pursue his theory of pleading, especially if  
the claim could be either or especially if the claim could be either  
or both state and federal. [W]here plaintiff's claim involves both a  
federal ground and a state ground, the plaintiff is free to ignore  
the federal question and pitch his claim on the state ground.  
(Citations omitted)

25  
731 F. 2d 1423, 1426-1427 (9<sup>th</sup> Cir. 1984). See also Billy Jack, ETC v. New York Coat, Suit.

1      ETC., 511 F. Supp. 1180, 1184, 1187-1188 (1981).

2      Even if the Plaintiff's Complaint presented a federal question, the District Court would still  
3      not have original jurisdiction under certain circumstances:

4            ...we hold that under the jurisdictional statutes as they now  
5      stand federal courts do not have original jurisdiction, nor do  
6      they acquire jurisdiction on removal, when a federal question is  
7      presented by a complaint for a state declaratory judgment, but  
8      Skelly Oil would bar jurisdiction if the plaintiff had sought a  
9      federal declaratory judgment.

10     Franchise Tax Bd. v. Laborers Vac. Trust, 463 U.S. 1, 103 S. Ct. 2841, 77 L. Ed. 2d 433  
11    (1983).

12    The District Court of Guam has also held that, in general, civil cases are not removable from  
13   Superior Court to District Court of Guam. As the Supreme Court has ruled, the District Court must  
14   have original jurisdiction. Avery v. Sixteenth Guam Legislature, et al., Civil Case No. 81-0069  
15   (D.C. Guam 1981). The Supreme Court concluded that the District Court does not have original  
16   jurisdiction in these types of disputes:

17            ...There are good reasons why the federal courts should not  
18   entertain suits by the States to declare the validity of their  
19   regulations despite possibly conflicting federal law. States are not  
20   significantly prejudiced by an inability to come to federal court  
21   for a declaratory judgment in advance of a possible injunctive suit  
22   by a person subject to federal regulation. They have a variety of  
23   means by which they can enforce their own laws in their own  
24   courts, and they do not suffer if the preemption questions such  
25   enforcement may raise are tested there.

26                                \* \* \*

27            ...The situation presented by a State's suit for a declaration of the  
28   validity of state law is sufficiently removed from the spirit of  
29   necessity and careful limitation of district court jurisdiction that  
30   informed our statutory interpretation in Skelly Oil and Gully to  
31   convince us that, until Congress informs us otherwise, such a suit  
32   is not within the original jurisdiction of the United States district  
33   courts. Accordingly, the same suit brought originally in state  
34   court is not removable either.

1       Franchise Tax Bd. V. Laborers Vac. Trust, 463 U.S. 1, 103 S. Ct. 2841, 77 L.Ed. 2d 438 (1983).

2           While the AG avers federal jurisdiction on the basis of the federal statutes cited in the  
3 Complaint, there are local statutes and local rules and regulations which will need to be interpreted,  
4 including 3 GCA §§ 2101 (a), 2106, 13103, 14102, 14103, 17101 - 17514; 5 GCA §§ 9100 – 9312;  
5 1 GAR §§ 1101, 1102; 3 GAR §2112(5), 2114; 6 GAR §2114. Complaint p. 2, ¶¶ 2, 6; p.4 ¶22; p.  
6 6, ¶¶ 27, 28; p. 7, ¶¶ 29, 30, 31, 33; p.8, ¶ 32; p. 11, ¶¶ 46, 47, 48, 50; p. 12, ¶50, 51; p.13, ¶3.

7           The Ninth Circuit has held that even if there are federal claims inseparably intertwined with  
8 local claims arising out of the same set of facts, the whole action should be remanded. State of  
9 Washington v. American League of Professional Baseball Clubs, 460 F. 2d 654, 659 (9<sup>th</sup> Cir.  
10 1972). It is not enough that federal law preempts state law, federal law must also supplant the state  
11 law claim with a federal claim. Ethridge v. Harbor House Restaurant, 861 F2d 1389, 1395 (1988).

12           The United States Supreme Court decided a case similar to the one at hand  
13 regarding “whether the Employee Retirement Income Security Act of 1974 (ERISA)  
14 permits state tax authorities to collect unpaid state income taxes by levying in funds  
15 held in trust for the taxpayers under an ERISA-covered vacation benefit plan.”  
16 Franchise Tax Bd. v. Laborers Vac. Trust, 463 U.S. 1, 103 S. Ct. 2841, 77 L. Ed. 2d  
17 420 (1983). The Supreme Court explained the restrictions in removing cases to federal  
18 courts:

19           One powerful doctrine has emerged, however- the ‘well pleaded  
20 complaint’ rule - which as a practical matter severely limits the  
21 number of cases in which state law ‘creates the cause of action’  
22 that may be initiated in or removed to federal district court,  
23 thereby avoiding more-or-less automatically a number of  
24 potentially serious federal-state conflicts.

25           The Supreme Court in the ERISA case above went on to quote from the Gully case, *supra*:

‘Petitioner will have to prove that the state law has been obeyed  
before the question will be reached whether anything in its  
provisions or in administrative conduct under it is inconsistent  
with the federal rule. If what was done by the taxing officers in  
levying the tax in suit did not amount in substance under the  
law of Mississippi to an assessment of the shareholders, but in

1 substance as well as in form was an assessment of the bank  
2 alone, the conclusion will be inescapable that there was neither  
3 tax nor debt, apart from any barriers Congress may have built.  
4 On the other hand, a finding upon evidence that the Mississippi  
5 law has been obeyed may compose the controversy altogether,  
6 leaving no room for a contention that the federal law has been  
7 infringed. The most that one can say is that a question of federal  
8 law is lurking in the background, just as farther in the  
background there lurks a question of constitutional law, the  
question of state power in our federal form of government. A  
dispute so doubtful and conjectural, so far removed from plain  
necessity, is unavailing to extinguish the jurisdiction of the  
states.' Gully v. First National Bank in Maridian, Id., at 117, 81  
L.Ed. 70, 57 S.Ct. 96.

9 The Supreme Court addressed the Defendants' behavior in these proceedings:

10 .... . California law establishes a set of conditions, without  
11 reference to federal law, under which a tax levy may be  
12 enforced; federal law becomes relevant only by way of a  
13 defense to an obligation created entirely by state law, and then  
14 only if appellant has made out a valid claim for relief under  
state law. See supra, at 11-12, 77 L. Ed. 2d, at 431-432. The  
well-pleaded complaint rule was framed to deal with precisely  
such a situation. As we discuss above, since 1887 it has been  
settled law that a case may not be removed to federal court on  
the basis of a federal defense, including the defense of pre-  
emption, even if the defense is anticipated in the plaintiff's  
complaint, and even if both parties admit that the defense is  
the only question truly at issue in the case.

15 77 L. Ed. 2d at 433. See, also, Four Keys Leasing & Maintenance Corp. v. Simithis, 849 F. 2d 770  
(1988).

16 The party who brings a suit is master to decide what law he will rely upon. The Fair v.  
17 Kohler Die & Specialty Co., 228 US 22, 25, 56 L.Ed. 716, 33 S. Ct. 410 (1913); Franchise Tax Bd.  
18 v. Laborers Vac. Trust, 463 US 1, 77 L. Ed. 2d 420, 103 S Ct. 2841 (1983).

19 The District Court of Guam has previously held that federal question jurisdiction is available  
20 only when the claim arises directly under federal law. Suruhanu of Guam v. The Superior Court of  
21 Guam, et al., Civil Case No. 81-0104 (D.C. Guam 1981). The District Court ruled:

22 ...It is apparent that the basis for plaintiff's claim is not  
23 federal law; it is the interpretation of P.L. 16-24, a local  
24 territorial statute, as to its validity under the Organic Act of  
Guam, 48 U.S.C. §§1421, et seq. Therefore, since  
Plaintiff's claim is one arising under a local statute, it does  
not arise 'directly' under federal law and pursuant to above  
cited Section 82, the Superior Court of has exclusive

1 jurisdiction to entertain this claim.

2 Suruhanu of Guam v. The Superior Court of Guam, et al., Civil Case No. 81-0104 (D.C. Guam  
3 1981).

4 The Superior Court of Guam is the proper forum to decide if this action is preempted by  
5 federal statute. Texas v. Insurance Services Office, Inc., 699 F. Supp. 601 (1988); Zack Co. v.  
6 Howard, 658 F. Supp. 73 (1987); Anderson v. American Airlines, 2 F.3d 590 (1993). See, also,  
7 People ex rel. Hal D. v. Nine Mile Canal Co., 828 F. Supp. 823 (1993).

8 The Ninth Circuit agrees. Twenty years ago, in Agana Bay Development Co., Ltd. V.  
9 Supreme Court of Guam, the Court expressed its views on this matter:

10 We believe that the policy of leaving local matters to courts  
11 created by local legislatures is a sound one. Twenty Five years  
12 have passed since Guam was an "underdeveloped and isolated  
13 possession of the United State," as described by the district  
court.....

14 529 F. 2d at 954, 955, 956, 958 (1976).

15 As is explained in Federal Practice and Procedure §2315 at 22, 23 (1994), "[f]ederal courts  
16 are reluctant to interfere unnecessarily with state Court litigation. Absent a strong countervailing  
17 federal interest, a federal Court should not elbow its way into a controversy to render what may be  
18 an uncertain and ephemeral interpretation of state law."

19 The Superior Court of Guam is capable of considering the defense of federal preemption and  
20 whether or not the Superior Court has jurisdiction. Ethridge v. Harbor House Restaurant, 861 F.2d  
21 1389, 1400 (1988).

22 Accordingly, this case is appropriate for review by the Superior Court of Guam, and due to  
23 the lack of consent by defendant *I Mina' Bente Siete Na Liheslaturan Guåhan* to the removal, the  
24 case should be remanded.

## 25 CONCLUSION

The Court should grant the Motion of Defendant *I Mina' Bente Siete Na Likeslaturan Guahan*, the Guam Legislature, and remand this case back to the Superior Court of Guam as it was improperly removed without consent of all defendants.

Respectfully submitted this 22<sup>nd</sup> day of November, 2004.

**OFFICE OF THE LEGISLATIVE COUNSEL  
I MINA' BENTE SIETE NA LIHESLATURAN GUÅHAN**

---

## **THERESE M. TERLAJE**

---

On behalf of

*I MINA' BENTE SIETE NA LIHE SLATURAN GUÅHAN*